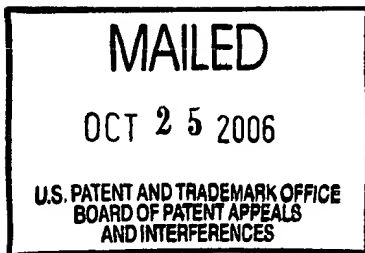


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte NATHAN S. LEWIS,
CAROL LEWIS, ROBERT GRUBBS
and
GREGORY ALLEN SOTZING

Application 09/409,644

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on September 28, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that an Appeal Brief was filed on November 9, 2004, followed by the filing of a Supplemental Appeal Brief on April 25, 2005.

37 CFR § 41.37(c)(1)(ix) and (x) (2005) read as follows:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

....

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

The Appeal Briefs filed November 9, 2004 and April 25, 2005 are deficient because they do not contain the “Evidence appendix” and the “Related proceedings appendix.” Correction is required.

In addition, pursuant to a memorandum dated April 29, 2002 by
Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

This Image File Wrapper (IFW) is not in compliance with the above because it does not appear to contain certified English translations for the German patent to Naarmann, DE 3728452A1, dated March 9, 1989; the Japanese patent to Sakaguchi, JP 4-2958, dated January 7, 1992; and the PCT Publication No. WO 95/08113, to Mifsud et al., dated March 23, 1995. Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for notification to appellants to submit a supplemental Appeal Brief which includes the "Evidence appendix" and "Related proceedings appendix";
- 2) for consideration of the supplemental Appeal Brief;

3) for obtaining certified English language translations for the German patent to Naarmann, DE 3728452A1, dated March 9, 1989; the Japanese patent to Sakaguchi, JP 4-2958, dated January 7, 1992; and the PCT Publication No. WO 95/08113, to Mifsud et al., dated March 23, 1995;

4) for having a complete copy of the three English language translations scanned into the IFW and a copy of said translations furnished to appellants; and

5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: *G. P. Edgure for Dale Shaw*
DALE M. SHAW
Deputy Chief Appeals Administrator
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DMS:psb

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